

applied for a license or is licensed in Oregon as an insurance producer if the person violated any insurance statute; or any rule, order, or subpoena, of the director or the insurance regulator of another state. ORS 744.077(2) prohibits a person licensed in Oregon only as an insurance producer from receiving compensation other than commission, for soliciting, selling, or negotiating insurance relative to persons residing in Oregon except as permitted otherwise by statute or rule. There is no law that permits an insurance producer to charge a person a fee for the services provided in this case. Additionally, although ORS 654.097(1)(a) requires an insurer that provides workers' compensation insurance to an employer covering employees in Oregon to furnish occupational safety and health loss control consultative services to the employer, ORS 654.097(4) prohibits an insurer, and thus also an insurance producer, from charging or receiving from the employer any fee for such services.

Prior to 3/19/08, Appalachian Underwriters was not licensed in Oregon in any capacity authorized by ORS Chapter 744 including as an insurance producer. Since 3/19/08, Appalachian Underwriters has been licensed in Oregon only as an insurance producer.

From 7/7/06 to 4/30/10, Appalachian Underwriters charged each of 117 employers in Oregon a fee ranging from \$100 to \$1,000, for a total of \$29,500.00, for a loss survey to be conducted by MRA Inspection Services, LLC relative to workers' compensation insurance. In each instance, Appalachian Underwriters sent the employer a written quote listing separately the premium for the insurance and the fee for the loss survey. The employer was not given the option of purchasing the insurance without the loss survey. The employer was not given additional information about the loss survey in the quote. The employer was not contacted by and did not contract with MRA about the fee or the services in advance of the services being performed. Of the amount charged, Appalachian Underwriters received \$26,650.00 and "waived" or did not receive the remaining \$2,850.00. In November 2009, the director received a complaint that Appalachian Underwriters was charging the fee. The director investigated the complaint. The director

investigated the complaint. As a result of the director's investigation and at the request of the director, Appalachian Underwriters stopped charging the fee to Oregon employers and refunded the fee to the employers that paid the fee.

Action

Pursuant to ORS 731.988(1), Appalachian Underwriters is assessed a civil penalty of \$40,000.00. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered or mailed to the Insurance Division at the Labor and Industries Building, 350 Winter Street NE Room 300, Salem, OR 97301-3880; or mailed to the Insurance Division at PO Box 14480, Salem, OR 97309-0405. The payment shall be *received* by the Insurance Division by the date of the final order.

Dated December 23, 2011

/s/ Robert J. Arowood
[Signature of Representative]
Robert J. Arowood
[Printed Name of Representative]
President
[Printed Title of Representative]

Appalachian Underwriters, Inc.

FINAL ORDER

The director incorporates herein the above stipulation, adopts it as the director's final decision in this proceeding, and orders that the action stated therein be taken.

Dated January 18, 2012

/s/ Louis Savage
Louis Savage
Acting Administrator
Insurance Division
Department of Consumer and Business Services

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